

Office Action Dated July 8, 2009
Application No. 10/552,163
Attorney Docket No. 82062-0177
Response Dated August 27, 2009

REMARKS

Applicants respectfully request examination of Claims 53-101. Before proceeding with an explanation as to why these claims should be examined, a brief review of file history is helpful.

In the Office action of 09-17-2008, the Examiner issued a restriction requirement of Claims 1-51 into two groups Group I – Claims 1-38; and Group II Claims 39-51. The basis of the restriction requirements was that Group I relates to a product claim and Group II relates to a product by process claim, and Group I & Group II lack unity of invention under PCT Rule 13.2, because they lack a special technical feature. More specifically, the Examiner asserted, “Splitting fibers into microfibers onto a nonwoven fabric is not a novel technical features as referenced by Pike (US 5,935, 833), [because] Pike teaches a nonwoven web is produced by the process of hydroentangling that splits and entangle [sic] the fibers to product a superfine microfiber nonwoven web [non pinpoint citation supplied].”

Applicants responded on October 17, 2008 by electing Group II with traverse, and amending Claims 39 and 40 so that they included all the features of Claim 1 and 8 respectively, and arguing that the Group II was a specially adapted process for the manufacture of the product of Group I.

The Examiner responded in the Office action of January 26, 2009, by stating, essentially, that in light of the current rejection, the specifically adapted process is known in the art, and therefore is not *special*. The Examiner argued “The burden has been shifted to the Applicants' to show unobvious difference between the claimed product and the prior art product.” (Applicants believe the Examiner meant “process” as opposed to “product.”) As best understood, this argument essentially boils down to the Examiner’s position that the claims as of January 26, 2009 contained technical features, but said technical features were not *special*, and therefore the lack of unity restriction requirement is proper until the Applicants overcome the Examiner’s *prima facie* case of obviousness.

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With the preceding in mind, Applicants filed the Amendment of April 14, 2009, to include one or more features that were patentable over the Examiner's applied art (*e.g.* U.S. 6,200,669 Marmon; 6,739,023 Vonfeldt; & 5,284,703 Everhart). Through the Applicants' amendment and associated arguments of April 14, 2009, Applicants have met the burden discussed in the Office action of January 26, 2009 by establishing the claims as amended share one or more *special* technical features. Thus the lack of unity restriction should be withdrawn.

Rather than withdrawing the lack of unity restriction, the Examiner issued Applicants a notice of nonresponsive amendment indicating that the proper status of the Claims 1-38 should be withdrawn.

To overcome this notice of nonresponsive amendment, Applicant is filing forthwith an amendment which cancels all the previously pending claims and presents new Claims 53-101 for examination on the merits. For the reasons discussed in the reply of April 14, 2009, the currently pending Claims 53-101 share *special* technical features, and therefore all the claims should be examined on the merits.

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CONCLUSION


In view of the foregoing, the Applicants respectfully request that the Examiner consider the claims as amended for examination on the merits. A timely allowance of the pending claims is requested. If there are any fees (such as necessary extension of time or extra claims fees) due in connection with the filing of this Response and Amendment which are not covered by the concurrently submitted transmittal document, please charge any necessary fees or credit any overpayments to Deposit Account No. 50-1349. The Examiner is invited to contact Applicants' undersigned attorneys and agents by telephone to discuss any matters if the Examiner feels such discussions may expedite the progress of the present application toward allowance.

Respectfully submitted,

Dated: August 27, 2009

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